

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DEVELOPERS SURETY AND INDEMNITY  
COMPANY,

Plaintiff,

v.

WOODLAND PARK TOWNHOMES, LLC,

Defendant.

Case No.: 2:18-cv-01206

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

Comes now, Plaintiff Developers Surety and Indemnity Company, by and through its attorneys Cozen O'Connor, and alleges as follows:

**I. PARTIES**

1.1 Developers Surety and Indemnity Company ("DSIC"), is a California corporation with its principal place of business at Irvine, California.

1.2 Upon information and belief, Defendant Woodland Park Townhomes, LLC ("Woodland Park"), is a Washington limited liability company with its principal place of business at Lynwood, Washington.

COMPLAINT FOR DECLARATORY JUDGMENT - 1

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**II. JURISDICTION**

2.1 This court has jurisdiction under 28 U.S.C. § 1332 as there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.

2.2 Upon information and belief, the sole member of Woodland Park Townhomes, LLC is the Washington limited liability company Hardy Development Company, LLC.

2.3 Upon information and belief, the sole member of Hardy Development Company, LLC is the Washington limited liability company, Gold Sun Investments, LLC.

2.4 Upon information and belief, the sole member of Gold Sun Investments, LLC is Robert Hardy, a Washington citizen.

2.5 Venue is proper under 28 U.S.C. § 1391(b) because Defendant Woodland Park is subject to the Court's personal jurisdiction in the Western District of Washington and a substantial part of the events giving rise to this claim occurred in the Western District of Washington.

**III. THE INSURANCE POLICY**

3.1 DSIC issued to Urban Construction Company, LLC ("Urban") Commercial General Liability Policy No. BIS0019539-0 for the policy period July 28, 2014 to July 28, 2015 (the "Policy").

3.2 Woodland Park asserts it is an "additional insured" under the Policy's Blanket Additional Insured endorsement which provides coverage for organizations who have "agreed in writing in a contract or agreement [with Urban] that such...organization be added as an additional insured."

3.3 According to the Policy's Declarations, the Policy provides coverage in the amount of \$1,000,000 for each "occurrence," with a general aggregate limit of \$2,000,000, and a products/completed operations limit of \$2,000,000.

1           3.4     The Insuring Agreement provides coverage for “those sums that the insured  
2 becomes legally obligated to pay as damages because of ‘bodily injury’ or ‘property damage’  
3 to which this insurance applies. [DSIC] will have the right and duty to defend the insured  
4 against any ‘suit’ seeking those damages.”

5           3.5     The Insuring Agreement limits coverage to “‘property damage’ [that] occurs  
6 during the policy period.”

7           3.6     The Coverage Trigger Endorsement limits coverage to “property damage” that  
8 the underlying claimant “sustains... during the policy period[.]”

9           3.7     The Policy’s “Your Product” exclusion precludes coverage for “property  
10 damage” to Urban’s “products.”

11          3.8     The Policy’s Residential Housing exclusion precludes coverage for “new  
12 residential construction.”

13          3.9     The Blanket Additional Insured endorsement terminates an additional insured’s  
14 status as an additional insured when Urban’s “operations for that additional insured are  
15 completed.”

16          3.10    The Construction Management exclusion precludes coverage for “‘property  
17 damage’ arising out of or resulting from any insured acting as or in the capacity of a  
18 ‘construction manager’ or ‘construction consultant.’”

19          3.11    The Additional Conditions endorsement precludes coverage if Urban: (1) was  
20 not an additional insured entitled to defense and indemnity under its contractors’ or  
21 subcontractors’ CGL policies; (2) failed to obtain certificates of insurance from its contractors  
22 or subcontractors; (3) the contractors’ or subcontractors’ CGL policies failed to provide  
23 insurance in amounts equal to or greater than the Policy; and (4) Urban did not obtain hold  
24 harmless agreements from its contractors and subcontractors indemnifying Urban against all  
25 loss related to work performed for Urban.  
26

IV. FACTS

4.1 Woodland Park developed the Woodland Park Townhomes project (the “Townhomes”) consisting of seven townhome-units in Seattle, Washington located at 4319-4325 Woodland Park Avenue North, Seattle, Washington.

4.2 Woodland Park hired Urban as the Construction Manager for the Townhomes’ construction. Urban was obligated to perform superintendent/supervisor services over the project’s daily operations.

4.3 The Policy expired on July 28, 2015.

4.4 Construction on the Townhomes’ structures began after August 28, 2015, when the City of Seattle approved the Townhomes’ foundational steel decking and fabrication.

4.5 On August 22, 2016, the Woodland Park Townhomes Homeowners Association (the “HOA”) incorporated under the laws of Washington.

4.6 On September 22, 2017, the City of Seattle issued occupancy permits for the Woodland Park Townhomes.

4.7 On September 22, 2017, the HOA filed suit against Woodland Park claiming (1) breach of contract, (2) breach of express warranty, and (3) breach of warranty of habitability arising from numerous unspecified construction defects causing “property damage” to the Townhomes. The Complaint seeks general damages, special damages, attorneys’ fees, and costs. The suit is captioned *Woodland Park Townhomes Homeowners Association v. Woodland Park Townhomes, LLC*, Case No. 17-2-24978-5 SEA (King Cty. Sup. Ct. Sep. 22, 2017) (the “Suit”).

4.8 Woodland Park tendered defense of the homeowners suit to DSIC and DSIC accepted the tender subject to a reservation of rights.

**V. CLAIM FOR DECLARATORY RELIEF**

5.1 DSIC re-alleges paragraphs 1.1 through 4.7 as if fully set forth here.

5.2 An actual and justiciable controversy exists between Woodland Park and DSIC with respect to coverage under the Policy's terms and applicable law. DSIC contends that coverage is barred in whole or in part in connection with the Suit for reasons, including but not limited to, the following:

5.3 All "property damage" alleged in the Suit occurred after the Policy expired.

5.4 The HOA and/or individual homeowners did not suffer "property damage" during the policy period.

5.5 The Townhomes are Urban's "product."

5.6 The Townhomes are "new residential construction."

5.7 The alleged "property damage" occurred after Urban completed its operations for Woodland Park.

5.8 The alleged "property damage" arose from Urban acting as a "construction manager."

5.9 Urban: (1) was not an additional insured under its contractors' or subcontractors' CGL policies; (2) failed to obtain certificates of insurance from its contractors or subcontractors; (3) its contractors' or subcontractors' CGL policies failed to provide insurance in amounts equal to or greater than the Policy; and (4) Urban did not obtain hold harmless agreements from its contractors and subcontractors indemnifying it against all loss related to work the contractors or subcontractors performed for Urban.

**VI. PRAYER FOR RELIEF**

WHEREFORE, DSIC prays for relief as follows:

6.1 For a declaration of this Court construing and interpreting the Policy accordingly:

1           1.     That DSIC is not obligated to defend or indemnify Woodland Park in  
2 the Suit.

3           2.     That all the “property damage” alleged in the Suit occurred after the  
4 Policy expired.

5           3.     That the HOA and/or individual homeowners did not suffer “property  
6 damage” during the policy period.

7           4.     That the Townhomes were Urban’s “product” for which there is no  
8 coverage under the Policy.

9           5.     That the Townhomes are “new residential construction” for which there  
10 is no coverage under the Policy.

11          6.     That the alleged “property damage” occurred after Urban completed its  
12 operations for Woodland Park precludes coverage under the Policy.

13          7.     That the alleged “property damage” arose as a result of Urban acting as  
14 a “construction manager” precludes coverage under the Policy.

15          8.     That Urban: (1) was not an additional insured under its contractors’ or  
16 subcontractors’ CGL policies; (2) failed to obtain certificates of insurance from its  
17 contractors or subcontractors; (3) its contractors’ or subcontractors’ CGL policies failed  
18 to provide insurance in amounts equal to or greater than the Policy; and (4) did not  
19 obtain hold harmless agreements from its contractors and subcontractors indemnifying  
20 it against all loss related to work the contractors or subcontractors performed for Urban.  
21 Therefore, there is no coverage under the Policy for any of the “property damage”  
22 alleged in the Suit.

23          9.     For DSIC’s attorneys’ fees and costs in this action; and

24          10.    For such other and further relief as the court deems just and proper.

25    //  
26    //  
  //

1 DATED this 16<sup>th</sup> day of August, 2018.

2 COZEN O'CONNOR

3  
4 By: /s/ William F. Knowles

5 William F. Knowles, WSBA No. 17212

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11 *Indemnity Company*

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 16, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following to all counsel of record.

DATED this 16<sup>th</sup> day of August, 2018.

COZEN O'CONNOR

By: /s/ Bonnie L. Buckner

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